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Committee

Larry E. Craig, Chairman
Jade West, Staff Director

Legislative Notice

Editor, Judy Gorman Prinkey

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S. 761 – Third Millennium Digital Commerce Act

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Reported July 30, 1999, by the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute. S. Rept. 106-131.

NOTEWORTHY

- The Third Millennium Digital Commerce Act, sponsored by Senator Abraham, would promote the use of electronic signatures. It is designed to guarantee the authenticity of financial and contractual transactions made over the Internet. [See Background section, p. 2, for more detail.]

- An attempt to reach unanimous consent to take up S. 761 this afternoon under a time agreement limiting debate to one hour and a substitute amendment to be offered by Senators Abraham and Leahy was objected to on the Democratic side.

- S. 761 is a priority for lending entities like Fannie Mae and has the support of many other organizations such as the Information Technology Association of America, the Information Technology Industry Council, the National Association of Manufacturers, the U.S. Chamber of Commerce, and several high-technology companies.

- S. 761 has the support of the Administration [see Administration Position, p. 3].

HIGHLIGHTS

S. 761 preempts state law and provides that the electronic records produced in the execution of a digital contract shall not be denied legal effect solely because they are electronic in nature. This federal preemption of state law is designed to be an interim measure. It preempts state law until the state enacts uniform standards which are consistent with those contained in this legislation or the "Uniform Electronic Transactions Act" (UETA) [see Background, also].

Note that Senators Abraham and Leahy plan to offer a substitute to S. 761 that would reduce the scope of preemption to protect state consumer protection laws.

Also, the legislation includes provisions that:

- grant parties to a transaction the freedom to determine the technologies and business methods ~~to be~~ used in the execution of an electronic contract;

- set forth the principles for the international use of electronic signatures which stress that paper-based obstacles must be eliminated and that a technology-neutral, market-based, non-discriminatory approach to electronic authentication technology should be adopted; and

- direct the Department of Commerce and Office of Management and Budget to report on federal laws and regulations that might pose barriers to electronic commerce and report to Congress on the impact of such provisions along with suggestions for reform.

The committee assesses that there will be no impact on personal privacy as a result of this bill.

BACKGROUND

Electronic signatures can contribute to paperless commerce by allowing companies and individuals to transact business digitally rather than physically. The electronic signature provides a secure electronic means of authenticating the originator's identity and verifying that an electronic document has not been subsequently altered.

Presently, one of the greatest barriers to the growth of Internet commerce is the lack of consistent, national rules governing the use of electronic signatures. While more than 40 states have enacted electronic authentication laws, no two of these laws are the same. This inconsistency deters businesses and consumers from using electronic signature technologies to authorize contracts or transactions. For the past two years, the National Conference of Commissioners on Uniform State Law (NCCUSL) has been working on model legislation designed to unify state law on electronic authentication in a more market-oriented, technology neutral approach. The conference is expected to report this model law, the "Uniform Electronic Transactions Act" (UETA), later this year. There would then likely be a transition period while states reviewed the model law, debated its merits, and enacted it into law.

ADMINISTRATION POSITION

On August 4, 1999, the Office of Management and Budget issued a Statement of Administration Policy, saying in its entirety:

> "The Administration supports Senate passage of S. 761, a bill that would promote electronic commerce by providing a consistent national framework for use of electronic signatures.
>
> "The Administration is pleased that the scope of S. 761 is limited to commercial transactions between private parties that affect interstate commerce. Further, the Administration applauds the preemption provisions of S. 761. Those provisions strike the appropriate balance between the needs of each State to develop its own laws in relation to commercial transactions and the needs of the Federal Government to ensure that electronic commerce will not be impeded by the lack of consistency in the treatment of electronic authentication."

COST

CBO estimates implementing the bill would cost about $500,000 a year subject to the availability of appropriated funds. S. 761 would not affect spending or receipts, and so pay-go procedures would not apply.

CBO estimates the costs of the intergovernmental mandate (the bill would temporarily preempt state laws until states enacted uniform standards equivalent to those specified in the bill) would not be significant, and would not exceed the $50 million threshold established by the Unfunded Mandates Reform Act. (As previously noted, Senators Abraham and Leahy plan to offer a substitute that would reduce the scope of preemption to protect state consumer protection laws.) CBO estimates the bill would not significantly affect the budgets of state, local, or tribal governments. The bill contains no new private-sector mandates.

Staff contact: Judy Myers, 224-2946